

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-00534

CATHERINE FOLEY,)
Plaintiff,)
v.) BRIEF IN SUPPORT OF
REPUBLIC AIRLINE, INC.;) PLAINTIFF'S MOTION TO
MIDWEST AIRLINES, INC.;) REOPEN CASE AND
MIDWEST EXPRESS AIRLINES, INC.;) MOTION TO ENFORCE
and FRONTIER AIRLINES, INC.,) SETTLEMENT
Defendants.) AGREEMENT

NOW COMES the Plaintiff, with her brief in support of her Motion to Reopen the Case and Motion to Enforce Settlement and unto the Court as follows:

On March 19th 2014, the parties participated in a court-ordered mediation and resolved the case. A Mediated Settlement Agreement which is attached an Exhibit to the plaintiff's motion was executed by counsel for both parties and by the plaintiff. Specifically, the parties agreed that the settlement proceeds would be paid within 45 days of date that the release was executed by the plaintiff. On March 29, 2014, the plaintiff fully executed the defendants' release (attached to the plaintiff's motion as an Exhibit). The executed release was forwarded to the Defendants counsel via email on March 31, 2014.

More than 45 days has elapsed since the defendants entered into the Mediated Settlement Agreement and more than 45 days have elapsed since the execution of the full release. As of the date of this motion, defendants have not submitted settlement funds to the plaintiff. Plaintiff's counsel has called and emailed defense counsel but the defendants have still not provided the settlement funds as provided in their agreements.

It is well settled that a settlement agreement may be enforced by filing a new action or by filing a motion in the cause. *The Currituck Associates v. Hollowell* 601 S.E.2d 262.

Further, it is well-settled that a mediated settlement agreement constitutes a valid contract between the settling parties which is `governed by general principles of contract law.'" *McClure Lumber Co. v. Helmsman Constr., Inc.*, 160 N.C.App. 190, 197, 585 S.E.2d 234, 238 (2003) (quoting *Chappell v. Roth*, 353 N.C. 690, 692, 548 S.E.2d 499, 500 (2001)). In other words, the Mediated Settlement Agreement and the Release are enforceable if there is mutual assent to the material terms. In this case there is no question but that the material terms of the Mediated Settlement Agreement and also the Release reflect the material terms of the agreement between the parties.

In the instant action, counsel for the parties specifically negotiated the term for the deadline of the settlement payment. There was back-and-forth negotiation on this specific term and eventually the plaintiff acquiesced to the defendant's proposed deadline. The parties mutually assented to this term as well as all of the other terms of the Mediated Settlement Agreement and the Release. As of the date of this motion, the plaintiff have still not complied with their obligations under the Mediated Settlement Agreement or Release.

In the meantime, counsel for the plaintiff has expended time calling and writing the defense counsel seeking to resolve this matter without the necessity of filing this Motion. On May 29, 2014, the parties received a Show Cause Order in this matter seeking a dismissal in this case. The plaintiff's counsel unnecessarily will be forced to expend more time responding to this Motion

WHEREFORE, the plaintiff prays that the Court enter an Order reopening the case and an Order requiring the Defendant to comply with their Agreements immediately and that the Court award plaintiff's reasonable attorneys fees that were incurred as a result of this motion.

This the 29 day of May, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing pleading was served on the following parties to this action by: () hand delivery () by federal express (X) by depositing a copy of the same in the United States Mail postage prepaid and addressed to:

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This the __29__ day of May, 2014.

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